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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/636,165	08/06/2003	George T. Foster	158259-0003	3592

1622 7590 04/07/2005

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NEWPORT BEACH, CA 92660

EXAMINER
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CEGIELNIK, URSZULA M

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/636,165

Applicant(s)

FOSTER ET AL.

Examiner

Urszula M. Cegielnik

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 20-23 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 24-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 02/06/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Applicant's election without traverse of Group I (claims 1-19 and 24-27) in the reply filed on 19 August 2004 is acknowledged.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 7, 10, 11, 12, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by European Patent Application No. EP 0700703, hereinafter EP '703.

EP '703 discloses a remote controlled vehicle (10) having a launch mechanism (48); a powered projectile (50) that is coupled to the launch mechanism (48) of the remote controlled vehicle (10); and a remote controlled transmitter (120) that is wirelessly coupled to the remote controlled vehicle (10); the powered projectile (50) is remote controlled by the remote controlled transmitter (120); the launch mechanism (48) includes a catapult (23); the remote controlled transmitter (120) controls the remote controlled vehicle (10) before the powered projectile (50) is launched by the launch means (48) (*the remote controlled transmitter controls the remote controlled vehicle by a button 130 for releasing the hooks from engagement to permit the structure 15 to pop out prior to the launching of projectile 50*); the remote controlled vehicle (10) includes a motor (20) and a power source (battery 24); the powered projectile (50) includes a motor (28) and a power source (battery 24).

Claims 1, 2, 4-7, 9-16, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Avila et al.

Avila et al. disclose a remote controlled vehicle (mobile vehicle – HMMVVV 15) that has a launch mechanism (munitions arms 28); a powered projectile (STINGER missile) that is coupled to the launch mechanism (munitions arms 28) of the remote controlled vehicle (mobile vehicle – HMMVVV 15); and a remote controlled transmitter (26) that is wirelessly coupled to the remote controlled vehicle (mobile vehicle – HMMVVV 15) and the remote controlled projectile (STINGER missile); the remote controlled vehicle and the powered projectile each have contacts *FLIR – Forward Looking Infrared scanner/seeker*) for sensing separation between the powered projectile (STINGER missile) and the remote controlled vehicle (mobile vehicle – HMMVVV); the remote controlled transmitter (26) controls the remote controlled vehicle (i.e. positioning the munitions arms 28 prior to launching) before the powered projectile (STINGER missile) is launched by the launch means (28) and controls the powered projectile (STINGER missile) after the power projectile (STINGER missile) is launched by the launch means (28); the projectile (STINGER missile) is remote controlled by the remote controlled transmitter (26); the remote controlled vehicle (mobile vehicle – HMMVVV) includes a motor (78) and a power source (alternator/battery combination); the projectile (STINGER missile) includes a motor (rocket motor) and a power source (missile booster);

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 17, and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Application No. EP 0700703, hereinafter EP '703 in view of German Patent Publication No. DE 4118330, hereinafter DE '330.

EP '703 discloses the claimed invention except for the powered projectile being configured as an airplane

DE 330 teaches a powered projectile configured as an airplane (see The Figure).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the powered projectile configured as an airplane as taught by DE '330 since such a modification would add more appeal to the toy.

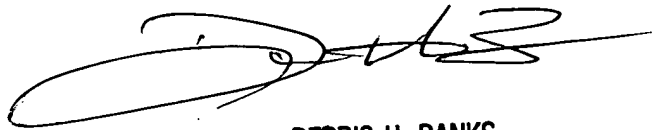
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-272-4420. The examiner can normally be reached on Monday through Friday, from 5:45AM - 2:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 571-272-4419.

**The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for both regular and After Final communications.**

Urszula M. Cegielnik  
Assistant Examiner  
Art Unit 3714

A handwritten signature in black ink, appearing to read 'D. Banks', with a large, stylized loop at the beginning and a long horizontal stroke extending to the right.

**DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700**